The Cochin Civil Disabilities Removal Bill

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* Sir, I move that the Cochin Civil Disabilities Removal Bill be taken up and finally passed.

Mr. K. Ayyappan *(Ezhuvas-Kanayannur):* I second it.

Motion put and carried

* The Cochin Makkathayam Thiyya Bill

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* Mr. President, Sir, I beg leave of the House to present the Select Committee report on the Cochin Makkathayam Thiyya Bill. The Select Committee made only very few alterations in the substantial portions of the Bill. The most important change effected by the Select Committee is in regard to inheritance. Instead of giving one-third share to the daughter as originally proposed, the Select Committee has reported to give half of the son's share to the daughter. With regard to other Chapters, very few changes have been made. Only some imperfections and mistakes in the drafting are made clear and a minimum age has been fixed by section 6 for marriage. Originally as the Bill was drafted, no penalty was prescribed for violating the minimum age provision. Some penalties have now been incorporated therefor. I beg leave of the House to move that the Report be taken up for consideration.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* I second it.

Mr. President: I am afraid it is not possible for me to take all the amendments of which late notice has been given. The Bill has gone to the Select Committee and has been published, and unless amendments are not given sufficiently in advance, I do not think, there is any justification for the rule regarding the minimum time. It creates a lot of confusion; members have no time to think over the matter and the progress of the Bill is being delayed. So, unless the amendments are of a verbal nature or are well understood or have the unanimous support of the House, I do not think I should allow amendments at a late stage as this.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* Sir, I shall move only the amendment with regard to Clause 5. It is only a verbal alteration, to delete only one word.

Clauses 2, 3 and 4 put and carried

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* The Hon'ble Member Mr. Viswambharan wants to delete the word "Marayan". They are really called Thiyyas or Ezhuvas in the documents. He

* Appendix II

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does not want that name. So there is no necessity to include that term.

Mr. President: Are there no Thiyyas called Marayas?

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* In the documents they are called as Thiyyas or Ezhuvas.

Mr. C. A. Kunjunni Raja *(Advocate-General):* Marayans are Thiyyas.

Mr. President: What harm is there in using the word?

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* They take it as an insult to be called Marayans. They are Ezhuvas. Some persons call them as Marayas.

Mr. C. A. Kunjunni Raja *(Advocate-General):* In the census reports, they are called Marayas.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* Those are Marayas of Chittur Taluk.

Mr. C. V. Iyyu *(Kunnamkulam):* There are a very large number of these people in the Talappalli taluk and in my constituency. They are a sub-caste among Ezhuvas. The orthodox Ezhuvas do not inter-marry with them. I think the advanced section and the educated young men among them take it as an insult to be called Marayas. Very rarely inter-marriages are now taking place with the other Ezhuvas, and they take it as an insult in keeping that name. I have sounded the opinion of the people in those places. So it may be deleted.

Mr. C. A. Kunjunni Raja *(Advocate-General):* If we do not specifically mention that name, there will be difficulty.

Mr. P. Govinda Menon *(Mulakunnathukavu):* Without meaning any disrespect to the sentiments expressed by the hon'ble members I think it is not proper to effect the change. Every one of the member of the community may not have been consulted. There may be one or two who may not accept the change and those members will not get the benefit of the Bill.

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* They are really described in documents as Thiyyas and Ezhuvas.

Mr. P. Govinda Menon *(Mulakunnathukavu):* The hon'ble member might not have looked into all documents.

Mr. President: If the word Marayan is used for Ezhuvas, then I think that term should be in the Bill. We may not use it in official documents, but in the Statute it must be made clear. I think it ought to be retained.

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Mr. A. B. Salem *(Mattancheri):* What is the harm in giving this Mārayan a promotion to the Thiyya?

Mr. President: We have no objection to put that term. But it is by way of caution that we say that the word should be retained.

Clauses 5 to 46 put and carried

Clause 1 put and carried

Title and Preamble put and carried

Mr. V. K. Krishnankutty *(Ezhuvas-Trichur):* I move that the Bill may be taken up and finally passed tomorrow.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* I second it.

Motion put and carried

The Cochin Usurious Loans Act Amendment Bill*

Mr. T. V. Subramania Ayyar *(Nemmara):* I beg leave to present the report of the Select Committee on the Cochin Usurious Loans Act Amendment Bill. The Bill as originally drafted by me included a clause bringing in the co-operative societies also within its purview. In response to the opinion expressed in the Select Committee, we have unanimously agreed that that provision may be deleted. The principle that reduction of interest is necessary at the present time has been recognised by this House at the stage of the introduction of the Bill and no remark in that connection is necessary now. The main change that was made by the Select Com- mittee is that instead of 6 per cent as at first proposed, it was raised to 7½ per cent. It was also thought expedient and proper that public companies should be given the benefit of being able to collect a greater rate of interest in view of the fact that Agricultural Relief Act has given them some special treatment. Barring these two changes, the Bill remains the same as it was introduced. I hope this will be a non-controversial subject and the motion will be passed unanimously by the House.

Motion put and carried

Mr. C. A. Kunjunni Raja *(Advocate-General):* Government cannot accept the Bill, and they are opposing clauses 2 and 3. The objection is that this Bill will have a retrospective effect if this amendment is allowed. To point out one instance, as the law now stands, interest above 12 per cent alone is considered usurious. No doubt, under the Agriculturist Relief Act, the rate of interest has

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APPENDIX I

THE COCHIN TENANCY ACT (AMENDMENT) BILL

Preamble.—Whereas it is expedient to amend the Cochin Tenancy Act, XV of 1113, for the purposes hereinafter appearing; It is hereby enacted as follows.—

1. *Short title.*—This Act may be called the Cochin Tenancy (Amendment Act of 11 .

2. *Commencement.*—It shall come into force at once and shall also apply to all pending suits, including appeals.

3. *Amendment to section 2 (d).*—In section 2 clause (*d*)—

Number the existing Explanation as Explanation I and add as Explanation II the following.—

"*Explanation II.*—

(*i*) A transaction called "*Panayam*" in the document evidencing it and possessing the incidents mentioned in sub-clauses 1 and 2 of this clause shall, until the contrary is proved, be presumed to be a *kanam* within the meaning of this section, if it is a renewal of a previous document or if in respect of it a counter-part has been executed by the *panayam* tenant or there is a provision for renewal or for the payment of *puravaka* dues:

Provided that nothing in this Explanation shall apply to a document expressly described as *karipanayam, kaivasapanayam, kozhuverukkapanayam* or *nadappu-panayam.*

(*ii*) A provision in any document of the kind referred to in clause (*i*) providing for surrender of the holding on demand to the landlord shall not, by itself, give rise to any presumption contrary to that provided for in clause (*i*) of this Explanation."

APPENDIX II

THE COCHIN MAKKATHAYAM THIYYA BILL AS MODIFIED BY THE SELECT COMMITTEE

Preamble.—Whereas it is expedient to define, regulate and amend the law of marriage, maintenance, guardianship, inheritance and succession of the Makkathayam Thiyyas; It is hereby enacted as follows.—

CHAPTER I

1. *Short title and commencement.*—This Act may be called the Cochin Makkathayam Thiyya Act, of 111 , and it shall come into force at once.

2. *Application.*—It shall apply to all Thiyyas domiciled in Cochin except the Chittur Taluk who follow Makkathayam and to such Thiyyas, whether so domiciled or not, as have or shall have marital relations with them.

3. *Saving.*—Nothing in this Act shall confer any right on the parties to a marriage dissolved before this Act comes into force.

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4. *Act to constitute law in cases of intestate succession.*—Except as provided for any other law for the time being in force, the rules herein contained shall constitute the law of Cochin applicable to all cases of intestate succession among Thiyyas.

5. *Definitions.*—In this Act unless there is something repugnant in the subject or context—

(*i*) "Thiyya" includes Ezhuva, Chova, Billava, Marayan, Thandan and others recognized as such.

(*ii*) "Son," "daughter" or any word which expresses relationship denotes only a legitimate relative.

When owing to any physical defect or deformity, it is not possible to ascertain the sex of any of the heirs of an intestate, such heirs shall, for the purpose of this Act, be regarded as a female.

(*iii*) *Kindred or consanguinity.*—Kindred or consanguinity is the connection or relation of persons descended from the same stock or ancestor.

Lineal consanguinity.—Lineal consanguinity is that which subsists between two persons one of whom is descended in a direct line from the other, as between a man and his father, grandfather or great-grandfather and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son, his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.—Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purposes of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon from the person deceased to the commonstock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

CHAPTER II

MARRIAGE AND ITS DISSOLUTION

6. *Marriage.*—The conjugal relation of a Thiyya male or female with a Thiyya female or male, subject to the restrictions of consanguinity and affinity recognised by the community, openly solemnised before the date on which this Act comes into force and subsisting on such date, or so solemnised after the date on which this Act comes into force shall be deemed to be a valid marriage for all legal purposes:

Provided that no conjugal union, solemnised after the date on which this Act comes into force, shall, in the case of a male who has not completed 18 years of age or of a female who has not completed 14 years of age, be deemed to be a legally valid marriage.

Conjugal union may be openly solemnised in any of the following ways.—

(*a*) by the tying of the *Mangalya Sutram.*

(*b*) by the presentation of cloth to the female by the male,

(*c*) by exchange of rings,

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(*d*) by mutual garlanding, and

(*e*) by mutual consent evidenced by a registered instrument attested by not less than two witnesses.

7. *Punishment for solemnisation of marriage declared invalid under section 6.*—Whoever being a male above 18 years of age solemnises a marriage declared invalid under section 6 shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 500 or with both.

8. *Punishment for permitting marriage invalid under section 6.*—Where, after the date of this Act, a marriage declared invalid under section 6 is solemnised by a minor, any person having charge of such minor, whether as parent or guardian or in any capacity, who does any act to promote the marriage or permits it to be solemnised shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 500 or with both.

9. *District Magistrate to try offences under sections 7 and 8.*—No court other than that of the District Magistrate shall take cognisance of or try any offence under sections 7 and 8.

10. *Complaint to be filed within one year of the offence.*—No court shall take cognisance of any offence under sections 7 and 8, save upon a complaint made within one year of the commission of such offence.

11. *Subsequent marriage void.*—The subsequent marriage of a male or female during the continuance of a prior marriage and performed after the commencement of this Act is void.

Illustrations

(*a*) *C*, a male marries *B*, who has married *A* during the continuance of *A*'s marriage. *B* and *C* are liable to punishment for bigamy under section 474, Cochin Penal Code, and abetment thereof respectively.

(*b*) *C*, a male who has married *A*, marries *B* during the continuance of *A*'s marriage. *C* and *B* are liable to punishment for bigamy under section 474, Cochin Penal Code, and abetment thereof respectively.

12. *Polyandrous marriage performed after this Act void.*—A polyandrous marriage performed after this Act shall be void.

13. *Dissolution of marriage.*—Marriage is dissolved only in one of the following ways.—

(*i*) by the death of either party,

(*ii*) by mutual consent evidenced by a registered instrument attested by not less than two witnesses, and

(*iii*) by a formal order of dissolution as hereinafter provided.

14. *Petition for dissolution of marriage.*—A husband or wife, but not any person as the next friend of a minor wife, may present a petition for dissolution of the marriage under section 13, clause (*iii*), in the Court of the District Munsiff, within the local limits of whose jurisdiction the respondent resides carries on business, or personally works for gain or if the respondent resides, carries on business or personally works for gain in any place outside Cochin, in the Court of the District Munsiff within whose jurisdiction the petitioner resides or the marriage was solemnised; and where the petitioner is the husband, he shall be liable to pay reasonable compensation to the respondent,

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15. *Reasonable compensation how determined.*—What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means and circumstances of the parties, but without going into the grounds of the proposed dissolution, and it shall in no case exceed Rs. 2,000.

16. *Notice to be given to the respondent.*—A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

17. *When and how the order of dissolution passed.*—Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the Court shall declare, in writing, the marriage dissolved and then determine and decree the amount of compensation. The dissolution shall take effect from the date of the order declaring it.

Decree awarding compensation executable and appealable.—The order decreeing compensation shall be tantamount to a decree and shall be executable as such and shall, subject to the payment of Court Fee on the amount in dispute, be appealable under the Code of Civil Procedure.

18. *Restitution and judicial separation not to be sued for.*—No Court shall entertain a suit for restitution of conjugal rights or for judicial separation between parties.

CHAPTER III
MAINTENANCE AND GUARDIANSHIP

19. *Maintenance of wife and minor children.*—The wife and minor children, except married minor daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or the father as the case may be:

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause.

20. *Guardianship of minor wife and children.*—The husband shall be the legal guardian of his minor wife and the father of his minor children other than married daughters under the guardianship of their husbands and of his grandchildren by his widowed minor daughters in respect of their person and property.

21. *Guardianship of minor children by former husbands.*—Where the wife has minor children by a former husband, deceased, she shall be the legal guardian in respect of their person and property.

CHAPTER IV
SUCCESSION

22. *Testamentary power.*—A Thiyya of sound mind, not being a minor may dispose of by will, in writing the whole of his or her property and may appoint an executor or executors to administer the will.

23. *Succession to a deceased person's immovable and movable property respectively.*—Succession to immovable property situated in Cochin and belonging to a Thiyya is regulated by this Act wherever he may have had his domicile at the time of his death.

Succession to the movable property of a deceased Thiyya is regulated by the law of the country in which he had his domicile at the time of his death.

24. *Succession to movable property in Cochin in the absence of proof of domicile.*—If a Thiyya dies leaving movable property in Cochin, in the absence of proof of any domicile elsewhere, succession to the property is regulated by this Act.

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25. *No distinction between those born and those conceived in the life-time of the deceased.*—For the purpose of succession there is no distinction between those who were actually born in the life-time of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

26. *Property held to be similar.*—For the purpose of succession there is no distinction between the self-acquired property and the ancestral property or between the property of a male and that of a female except as otherwise provided by this Act.

OF INTESTACY

27. *As to what property deceased considered to have died intestate.*—A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations

(*a*) *A* has left no will. He has died intestate in respect of the whole of his property.

(*b*) *A* has left a will, whereby he has appointed *B* his executor, but the will contains no other provisions. *A* has died intestate in respect of the distribution of his property.

(*c*) *A* has bequeathed his whole property for an illegal purpose. *A* has died intestate in respect of the distribution of his property.

(*d*) *A* has bequeathed Rs. 1,000 to *B* and Rs. 1,000 to the eldest son of *C* and has made no other bequest and has died leaving the sum of Rs. 2,000 and no other property. *C* died before *A* without having ever had a son. *A* has died intestate in respect of the distribution of Rs. 1,000.

28. *Devolution of intestate property.*—Property in respect of which a Thiyya has died intestate devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

29. *Where there are more widows than one.*—Where the intestate has left more than one widow, the distribution of inheritance referred to in sections 30, 31, 32 and 33 shall be made as if there is only one widow, all the widows together taking equally only one widow's share.

30. *When widow and son or lineal descendant of son are left.*—Where the intestate has left a widow if he has also left a son, or lineal descendant of a son, a share equal to that of a son shall belong to the widow.

31. *Where widow and daughter or daughter's lineal descendants are left.*—Where the intestate has left a widow, if he has also left lineal descendants, but no son or a lineal descendant of a son, a share equal to that of a daughter shall belong to her.

32. *Where no lineal descendants are left, widow's share.*—If the intestate has left no lineal descendants but has left his father or mother or paternal grandfather or any lineal descendants of his father or paternal grandfather, one half of his property shall belong to the widow.

33. *When widow gets entire property.*—If he has left none of the kindred referred to in sections 31 and 32 the whole of his property shall belong to the widow.

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34. *Widower's rights same as widow's.*—The husband surviving his wife has the same rights in respect of her property if she dies intestate, as the widow has in respect of her husband's property, if he dies intestate.

35. *Where no widow but lineal descendants left.*—Where the intestate has left no widow, his property devolve on his lineal descendants, or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained.

DISTRIBUTION OF INTESTATE'S PROPERTY

(*a*) Where he has left lineal descendants.

36. *Rules of distribution.*—The rules for the distribution of the intestate's property (after deducting the widow's share if he has left any) among his lineal descendants are as follows.—

37. *The nearer excludes the remote.*—Every lineal descendant of the intestate who survives him: excludes from inheritance his own descendants.

38. *Where only one lineal descendant.*—If the intestate has left surviving him only one lineal descendant not excluded by the operation of the preceding section, the property shall belong to him.

39. *Where more than one lineal descendant.*—If the intestate has left more than one such lineal descendant, they shall divide the inheritance as follows .—

(*a*) If all of them are the sons of the intestate, or if all of them are his daughters, equally.

(*b*) If some of them are his sons and others are his daughters, each daughter shall take a half of the share of a son if the intestate is a male, and if the intestate is a female all children shall take equally.

(*c*) If some or all of them are related to him more remotely than in the first degree, the property shall be divided into such a number of shares as shall correspond with the number of his children who either survived the intestate or died before the intestate leaving lineal descendants surviving the intestate; the shares so allotted shall bear the same ratio to each other as if such children had all survived the intestate; the children of the intestate, if any, who survived him, shall take the shares so allotted to them; the share of each of the remaining children shall be divided among his or her lineal descendants per stirpes and in such manner that the share allotted to a female who either survived the intestate or died before him leaving lineal descendants surviving him, shall be equal to that of each of such her sisters and a half of each of such her brothers, if the intestate is a male, and equal to that of her brothers and sisters if the intestate is a female, and the share allotted to a male, who either survived the intestate or died before the intestate leaving lineal descendants surviving the intestate shall be equal to that of each of such his brothers, as either survived the intestate or died before the intestate, leaving lineal descendants surviving the intestate.

Illustration to (*c*)

A, a male, has three children, Govindan, Gopalan and Narayani. Govindan has two sons, Gopalan has two daughters and Narayani has three children Thilakan, Nalini and Leela, of whom Thilakan has two children, Sugathan and Sujatha.

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Gopalan, Narayani and Thilakan predecease *A*. The property of *A* shall be divided as follows.—2/5 to Govindan; Govindan's children are excluded; 1/5 to each of the daughters of Gopalan; 1/4 of 1/5 to Nalini; 1/4 of 1/5 to Leela; 2/3 of 1/2 of 1/5 to Sugathan and 1/3 of 1/2 of 1/5 to Sujatha.

(*b*) Where the intestate has left no lineal descendants—

40. *Where no lineal descendants are left.*—Where the intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows.—

41. *Father's and mother's rights.*—If the intestate's father and mother are living they shall take equal shares of the property. If one of them only is living, he or she shall take the whole.

42. *Where parents are dead leaving lineal descendants of father.*—If the intestate's parents are dead, the property shall be inherited by the lineal descendants of the father in the same manner as it would if the father survived him and died intestate immediately after, leaving no widow.

43. *Right of paternal grand-parents.*—If the intestate's parents are dead, and there are no lineal descendants of the father the property shall go to the paternal grand-parents of the intestate in equal shares. If one of them only is living he or she shall take the whole.

44. *Where paternal grand-parents are dead.*—If the intestate's paternal grand-parents are dead the property shall be inherited by the lineal descendants of the paternal grand-father in the same manner as if the paternal grand-father survived the intestate and died intestate immediately after leaving no widow.

45. *Where intestate left none of the foregoing kindred.*—Where the intestate has left no widow nor any kindred capable of inheriting under the preceding rules, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

46. *Illegitimate children.*—Notwithstanding anything herein contained to the contrary, illegitimate children or their lineal descendants are entitled to inherit the property of their mother, subject to the share which devolves on her husband if any, as if they were legitimate.

APPENDIX III

THE COCHIN USURIOUS LOANS ACT AMENDMENT BILL

As modified by the Select Committee

Preamble.—Whereas it is expedient to amend the Cochin Usurious Loans Act, XXVIII of 1111, it is hereby enacted as follows.—

1. *Short title, extent and commencement.*—(1) This Act may be called the Cochin Usurious Loans (Amendment) Act of 111 .

(2) It extends to the whole of Cochin and shall come into force at once.

2. *Amendment to section 2.*—Insert as section 2 (4) in Act XXVIII of 1111 the following.—

"(4) 'Public Company' means any public company as defined in the Indian Companies Act, VII of 1913, or the same as made applicable to Cochin State or in the Companies Act of any Indian State or Foreign Government."

3. *Amendment to sections 3 and 5.*—In sections 3 (2) (*e*) and 5 of Act XXVII of 1111 for the figure "12" the following words shall be substituted.—

"Nine in the case of transactions relating to public companies and seven and a half in the case of all other transactions".

C. J. MATHEW
Secretary to the Council

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